

Department of State

§ 62.50

(B) Showing that the exchange visitor failed to maintain valid program status due to circumstances beyond the control of the exchange visitor, or from administrative delay or oversight, inadvertence, or excusable neglect on your part or the exchange visitor's part; and,

(C) Showing that it would be an unusual hardship to the exchange visitor if we do not grant the reinstatement to valid program status.

(i) *How will we notify you of our decision on your request for reinstatement?* (1) If we deny your request for reinstatement, we will notify you by letter.

(2) If we approve your request for reinstatement, we will notify you:

(i) By stamping Box 6 on the new Form DS-2019 to show that reinstatement was granted, effective as of the date on which the application for reinstatement was received by the Exchange Visitor Program Services office; and

(ii) By returning the new Form DS-2019 for the exchange visitor.

(j) *How long will it take us to act on your request for reinstatement?* We will act on your request for reinstatement within forty-five days from the date on which we receive the request and supporting documentation.

(k) *Are you required to notify us each time that you correct a record?* No special notification is necessary. Submission of the notification copy of Form DS-2019 to the Department of State serves as notice that a record has been corrected. Following the regulations in this part in issuing a letter or document serves as correction in the sponsor's file for those items not normally sent to the Department of State under existing notification procedures.

[64 FR 44126, Aug. 13, 1999. Redesignated at 64 FR 54539, Oct. 7, 1999]

Subpart D—Sanctions

§ 62.50 Sanctions.

(a) *Reason for sanctions.* The Department of State may, upon a determination by the Office of Exchange Coordination and Designation ("ECD"), Bureau of Educational and Cultural Affairs, impose sanctions against a sponsor which has:

(1) Willfully or negligently violated one or more provisions of this part;

(2) Evidenced a pattern of willful or negligent failure to comply with one or more provisions of this part;

(3) Committed an act of omission or commission which has or could have the effect of endangering the health, safety, or welfare of an exchange visitor; or

(4) Committed an act or acts which may have the effect of bringing the Department of State or the Exchange Visitor Program into notoriety or disrepute.

(b) *Lesser sanctions.* (1) In order to ensure full compliance with the regulations in this part, the Department of State, in its discretion and depending on the nature and seriousness of the violation, may impose any or all of the following sanctions ("lesser sanctions") on a sponsor for any of the reasons set forth in paragraph (a) of this section:

(i) A written reprimand to the sponsor, with a warning that repeated or persistent violations of the regulations in this Part may result in suspension or revocation of the sponsor's exchange visitor program designation, or other sanctions as set forth in this section;

(ii) A declaration placing the exchange visitor sponsor on probation, for a period of time determined by the Department of State in its discretion, signifying a pattern of serious willful or negligent violation of regulations such that further violations could lead to suspension or revocation;

(iii) A corrective action plan designed to cure the sponsor's violations; or

(iv) A limitation or reduction in the authorized number of exchange visitors in the sponsor's program or in the geographic area of the sponsor's recruitment or activity.

(2) Within ten (10) calendar days of service of the written notice to the sponsor imposing any of the sanctions set forth in this paragraph (b), the sponsor may submit to ECD any statement or information, including, if appropriate, any documentary evidence or affidavits in opposition to or mitigation of the sanction, and may request a

conference. Upon its review and consideration of such submission, the Department of State may, in its discretion, modify, withdraw, or confirm such sanction. All materials submitted by the sponsor shall become a part of the sponsor's file with ECD. The decision of ECD is not appealable with regard to lesser sanctions in paragraphs (b)(1)(i) through (iv) of this section, if:

(i) The proposed limitation in the size of the sponsor's program is equivalent to 10 percent or less of the number of authorized visitors in the sponsor's program during the previous calendar year; or

(ii) The proposed limitation in the size of the sponsor's program will not cause a significant financial burden for the sponsor.

(c) *Suspension or significant program limitation.* (1) Upon a finding that a suspension, or a reduction in the sponsor's program equivalent to a number greater than 10 percent of the number of authorized visitors, is warranted for any of the reasons set forth at paragraph (a) of this section, ECD shall give written notice to the sponsor of the Department of State's intent to impose the sanction, specifying therein the reasons for such sanction and the effective date thereof, which shall not be sooner than thirty (30) calendar days after the date of the letter of notification.

(2) Prior to the proposed effective date of such sanction, the sponsor may submit a protest to ECD, setting forth therein any reasons why suspension should not be imposed, and presenting any documentary evidence in support thereof, and demonstrating that the sponsor is in compliance with all lawful requirements. All materials submitted by the sponsor shall become a part of the sponsor's file with ECD.

(3) ECD shall review and consider the sponsor's submission and, within seven (7) calendar days of receipt thereof, notify the sponsor in writing of its decision on whether the sanction is to be affected. In the event that the decision is to impose the sanction, such notice shall inform the sponsor of its right to appeal the sanction and of its right to a formal hearing thereon.

(4) The sponsor may within ten (10) calendar days after receipt of the aforesaid notice effecting the sanction,

appeal the sanction to the Exchange Visitor Program Designation, Suspension and Revocation Board ("Board") by filing a notice of appeal with the Principal Deputy Assistant Secretary of the Bureau of Educational and Cultural Affairs. The filing of the notice of appeal shall serve to stay the effective date of the sanction pending appeal.

(5) Upon receipt of the notice of appeal, the Principal Deputy Assistant Secretary, or his or her designee, shall, within ten (10) calendar days, convene the Board. Thereafter, proceedings before the Board shall follow the regulations set forth in paragraph (i) of this section.

(d) *Summary suspension.* (1) ECD may, upon a finding that a sponsor has willfully or negligently committed a serious act of omission or commission which has or could have the effect of endangering the health, safety, or welfare of an exchange visitor, and upon written notice to the sponsor specifying the reason therefore and the effective date thereof, notify the sponsor of the Department of State's intent to suspend the designation of the sponsor's program for a period not to exceed sixty (60) calendar days.

(2) No later than three (3) calendar days after receipt of such notification, the sponsor may submit a rebuttal to ECD, setting forth therein any reasons why a suspension should not be imposed.

(3) The sponsor may present any statement or information in such protest, including, if appropriate, any documentary evidence or affidavits in opposition to or mitigation of the sanction, and demonstrating that the sponsor is in compliance with all lawful requirements. All materials submitted by the sponsor shall become a part of the sponsor's file with ECD. Within three (3) calendar days of receipt of such submissions, ECD shall notify the sponsor in writing of its decision whether to effect the suspension. In the event the decision is to effect the suspension, such notice shall advise the sponsor of its right to appeal the suspension and of its right to a formal hearing thereon.

(4) The sponsor may, within ten (10) calendar days after receipt of the

aforesaid notice continuing the suspension, appeal the suspension to the Board by filing a notice of appeal with the Principal Deputy Assistant Secretary of the Bureau of Educational and Cultural Affairs. The filing of the notice of appeal of a summary suspension shall not serve to stay the suspension pending appeal.

(5) Upon receipt of the notice of appeal, the Principal Deputy Assistant Secretary, or his or her designee shall, within ten (10) calendar days, convene the Board. Thereafter, proceedings before the Board shall follow the regulations set forth in paragraph (i) of this section.

(e) *Revocation.* (1) The Principal Deputy Assistant Secretary, or his or her designee, may, for any reason set forth at paragraph (a) of this section, give the sponsor not less than thirty (30) calendar days notice in writing of its intent to revoke the sponsor's exchange visitor program designation, specifying therein the grounds for such revocation and the effective date of the revocation. Revocation need not be preceded by the imposition of a summary suspension, a suspension, or any lesser sanctions.

(2) Within ten (10) calendar days of receipt of the notice of intent to revoke in paragraph (e)(1) of this section, the sponsor shall have an opportunity to show cause as to why such revocation should not be imposed, and may submit to the Principal Deputy Assistant Secretary any statement of information, including, if appropriate, any documentary evidence or affidavits in opposition to or mitigation of the violations charged, and demonstrating that the sponsor is in compliance with all lawful requirements. All materials submitted by the sponsor shall become a part of the sponsor's file with ECD.

(3) The Principal Deputy Assistant Secretary, or his or her designee, shall review and consider the sponsor's submission and, thereafter, notify the sponsor in writing of its decision on whether the revocation is to be effected. In the event that the decision is to effect the revocation, such notice shall advise the sponsor of its right to appeal the revocation and of its right to a formal hearing thereon.

(4) The sponsor may, within twenty (20) calendar days after receipt of the notice effecting the revocation in paragraph (e)(3) of this section, appeal the revocation to the Board by filing a notice of appeal with the Principal Deputy Assistant Secretary. The filing of the notice of appeal shall serve to stay the effective date of the revocation pending appeal.

(5) Upon receipt of the notice of appeal, the Principal Deputy Assistant Secretary, or his or her designee shall, within ten (10) calendar days, convene the Board. Thereafter, proceedings before the Board shall follow the regulations set forth in paragraph (i) of this section.

(f) *Responsible officers.* (1) The Department of State may direct a sponsor to summarily suspend, suspend or revoke the appointment of a responsible officer or alternate responsible officer for any of the reasons set forth in paragraph (a) of this section.

(2) In the event that such action is directed, the sponsor shall be entitled to all of the rights of review or appeal that are accorded to a sponsor under paragraphs (b), (c), (d), and (e) of this section.

(g) *Denial of application for redesignation.* (1) ECD shall give an applicant for redesignation not less than thirty (30) calendar days notice in writing of its intentions to deny the application for exchange visitor program redesignation, specifying therein the grounds for such denial.

(2) Within ten (10) calendar days of receipt of the aforesaid notice of intent to deny the application in paragraph (g)(1) of this section, the applicant shall have an opportunity to demonstrate why the application should be approved, and may submit to ECD any statement or information including, if appropriate, any documentary evidence or affidavits in support of its application.

(3) ECD shall review and consider the applicant's submission and thereafter notify the applicant in writing of its decision on whether the application for redesignation will be approved. In the event that the decision is to deny the applicant, such notice shall advise the

applicant of its right to appeal the denial and of its right to a formal hearing thereon.

(4) The applicant may, within twenty (20) calendar days after receipt of the notice of denial in paragraph (g)(3) of this section, appeal the denial to the Board by filing a notice of appeal with the Principal Deputy Assistant Secretary.

(5) Upon receipt of the notice of appeal the Principal Deputy Assistant Secretary, or his or her designee shall, within ten (10) calendar days, convene the Board. Thereafter, proceedings before the Board shall follow the regulations set forth in paragraph (i) of this section.

(h) *The Exchange Visitor Program Designation, Suspension, and Revocation Board.* (1) The Exchange Visitor Program Designation, Suspension, and Revocation Board (“Board”) shall consist of:

(i) The Deputy Assistant Secretary for Academic Programs of the Bureau of Educational and Cultural Affairs, or his or her designee, who shall also serve as presiding officer of the Board;

(ii) The Executive Director, Office of the Executive Director of the Bureau of Educational and Cultural Affairs, or his or her designee; and

(iii) The Director, Office of Policy and Evaluation of the Bureau of Educational and Cultural Affairs, or his or her designee.

(2) The Office of the Legal Adviser of the Department of State shall appoint an attorney from the Office of the Legal Adviser to present the case to the Board on behalf of the Department. Such attorney shall not take part in the deliberations of the Board.

(3) The Office of the Legal Adviser of the Department of State shall also appoint an attorney in the Office of the Legal Adviser to serve as a legal adviser to the Board. Such attorney shall not have had any substantial prior involvement with the particular case pending before the Board.

(i) *General powers of the Board.* At any hearing before the Board pursuant to this Part, the Board may:

(1) Administer oaths and affirmations;

(2) Rule on offers of proof and receive any oral or documentary evidence;

(3) Require the parties to submit lists of proposed witnesses and exhibits, and otherwise regulate the course of the hearing;

(4) Hold conferences for the settlement or simplification of the issues by consent of the parties;

(5) Dispose of motions, procedural requests, or similar matters; and

(6) Make decisions, which shall include findings of fact and conclusions of law on all the material issues of fact, law or discretion presented on the record, and the appropriate sanction or denial thereof.

(j) *Proceedings before the Board.* The following procedures shall govern all designation, suspension, summary suspension, and revocation proceedings before the Board:

(1) Upon being convened, the Board shall schedule a hearing, within ten (10) calendar days, at which hearing the parties may appear on their own behalf or by counsel, present oral or written evidence, and cross-examine witnesses. A substantially verbatim record of the hearing shall be made and shall become a part of the record of the proceeding;

(2) At the conclusion of the hearing, the Board shall promptly review the evidence and issue a written decision within ten (10) calendar days, signed by a majority of the members, stating the basis for its decision. The decision of the majority shall be the decision of the Board. If a Board member disagrees with the majority, the member may write a dissenting opinion;

(3) If the Board decides to affirm the suspension, summary suspension, revocation, or denial of redesignation, a copy of its decision shall be delivered to ECD, the sponsor, the Immigration and Naturalization Service, and the Bureau of Consular Affairs of the Department of State. ECD, at its discretion, may distribute the Board’s decision as it deems appropriate; and

(4) The suspension, revocation, or denial of designation shall be effective as of the date of the Board’s decision.

(k) *Effect of suspension, summary suspension, revocation, or denial of redesignation.* A sponsor against which an

order of suspension, summary suspension, revocation, or denial of redesignation has been entered shall not thereafter issue any Certificate of Eligibility for Exchange Visitor Status, advertise, recruit, or otherwise promote its program, and under no circumstances shall the sponsor facilitate the entry of an exchange visitor. Suspension, summary suspension, revocation, or denial of redesignation shall not invalidate any Certificate of Eligibility for Exchange Visitor Status issued prior to the effective date of the suspension, summary suspension, revocation, or denial of redesignation, nor shall the suspension, summary suspension, revocation, or denial of redesignation in any way diminish or restrict the sponsor's legal or financial responsibilities to existing program participants.

(1) *Miscellaneous—(1) Computation of time.* In computing any period of time prescribed or allowed by the regulations in this section, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a federal legal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, or federal legal holidays shall be excluded in the computation.

(2) *Service of notice on sponsor.* When used in this part the terms "written notice to the sponsor" shall mean service of written notice by mail, delivery or facsimile, upon either the president, managing director, responsible officer, or alternate responsible officer of the sponsor.

[67 FR 17613, Apr. 11, 2002]

Subpart E—Termination and Revocation of Programs

SOURCE: 67 FR 17615, April 11, 2002, unless otherwise noted.

§ 62.60 Termination of designation.

Designation shall be terminated when any of the circumstances set forth in this section occur.

(a) *Voluntary termination.* A sponsor may voluntarily terminate its designation by notifying the Department of State of such intent. The sponsor's designation shall terminate upon such notification. Such sponsor may reapply for designation.

(b) *Inactivity.* A sponsor's designation shall automatically terminate for inactivity if the sponsor fails to comply with the minimum size or duration requirements, as specified in § 62.8 (a) and (b), in any twelve month period. Such sponsor may reapply for program designation.

(c) *Failure to file annual reports.* A sponsor's designation shall automatically terminate if the sponsor fails to file annual reports for two consecutive years. Such sponsor is eligible to reapply for program designation upon the filing of the past due annual reports.

(d) *Change in ownership or control.* An exchange visitor program designation is not assignable or transferable. A major change in ownership or control automatically terminates the designation. However, the successor sponsor may apply to the Department of State for redesignation and may continue its exchange visitor activities while approval of the application for redesignation is pending before the Department of State:

(1) With respect to a for-profit corporation, a major change in ownership shall be deemed to have occurred when thirty-three and one-third percent (33⅓ percent) or more of its stock is sold or otherwise transferred within a 12 month period;

(2) With respect to a not-for-profit corporation, a major change of control shall be deemed to have occurred when fifty-one percent or more of the board of trustees, or other like body vested with its management, is replaced within a 12-month period.

(e) *Loss of licensure or accreditation.* A sponsor's designation shall automatically terminate in the event that the sponsor fails to remain in compliance with local, state, federal, or professional requirements necessary to carry